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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/641,357	08/15/2003	Mario L. Miano	1082	1184
7590	06/04/2004		EXAMINER	
Law Offices of John D. Gugliotta PE, Esq. 202 Delaware Building 137 South Main Street Akron, OH 44308				DESAI, HEMANT
		ART UNIT	PAPER NUMBER	3721

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/641,357	MIANO ET AL.	
	Examiner	Art Unit	
	Hemant M Desai	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 August 2003.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 2-4 is/are allowed.
- 6) Claim(s) 1 and 5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: " a stake is prior to wrapping", claim 5, line 7, should be "a stake prior to wrapping". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (6202387).

Brown et al. disclose an apparatus that wraps silverware/flatware (18, fig. 2) into a napkin (24, fig. 12) and fastens the roll (170, fig. 12) with an optional plain paper band, which meets all the claimed limitations.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (6202387) in view of Heisey (6615566).

Brown et al. disclose a method for automatically wrapping flatware in a napkin, the method comprising the steps of providing a stack of spoons (110, fig. 11) capable of being fed individually, providing a stack of forks (112, fig. 11) capable of being fed individually, providing a stack of knives (114, fig. 11) capable of being fed individually, feeding individually a single spoon, fork and knife down a feed chute (96, fig. 16) into a stack (102, fig. 22) prior to wrapping, providing paper napkins (36, fig. 1) and feeding a napkin by a pinch roller arrangement (64, 66, figs. 4-8), providing adhesive labels (212, fig. 25), directing the stack of flatware (102) to the napkin (36), wrapping the stack of flatware into a napkin and fastens the roll with a label (see fig. 25).

Brown et al., as mentioned above, disclose all the claimed limitations, except for a roll of napkin and rolled paper adhesive label.

However, Heisey teaches a roll of napkin (86, fig. 1) to provide desired size of napkin automatically (see col. 5, lines 19-25) and rolled paper adhesive label (76, fig. 5) to provide securing band (90, figs. 4-5) to securely close napkin bundle (70, figs. 4-5, see col. 6, lines 30-33). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the roll of napkin and rolled paper adhesive label as taught by Heisey in the method for automatically wrapping flatware in a napkin of Brown et al. to provide desired size of napkin automatically and to provide securing band to securely close napkin bundle.

NOTE: Since the method claim is broader than the apparatus claims and there is no extra burden on the examiner for search, the restriction requirement is in abeyance

for now. But any future amendments to the method claims may change the examiner's position regarding restriction requirements.

Allowable Subject Matter

6. Claims 2-4 are allowed.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M. Desai

HMD